



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

L. A. Pipeline Construction :
Co., Inc., : **Case No.: 15-0970**
 :
Petitioner, : **(Marshall County**
 : **Case Nos. 11-C-70, 11-C-124,**
v. : **12-C-47)**
 :
Glass Bagging Enterprises, Inc. :
 :
Respondent. :
 :

PETITIONER'S BRIEF

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ASSIGNMENT OF ERROR NO. 1

**THE CIRCUIT COURT ERRED IN GRANTING GLASS
BAGGING'S MOTION FOR SUMMARY JUDGMENT**

A. Does a mechanic's lien need to include a legal description of the property subject to the lien?

B. Does a mechanic's lien claimant need to take action to enforce its lien within six months?

C. Does a general contractor have standing to challenge the validity of a materialman's mechanic's lien?

D. If a materialman has filed a defective mechanic's lien, can the court reform the lien in equity or impose a lien on the property in favor of the materialman based solely on equitable considerations?

ASSIGNMENT OF ERROR NO. 2

**THE CIRCUIT COURT ERRED IN DENYING
L.A. PIPELINE'S MOTION FOR SUMMARY JUDGMENT**

STATEMENT OF THE CASE

L.A. Pipeline Construction Co., Inc. ("L.A. Pipeline") was contracted by Caiman Energy, LLC and Caiman Eastern Midstream, LLC (collectively, "Caiman") to install a pipeline in Marshall County, West Virginia. J.A.2. A more

detailed description of the location of the pipeline is found in Exhibit A of L.A. Pipeline's mechanic's lien against Caiman. J.A.65. All the assets of L.A. Pipeline, including its account receivable with Caiman, are subject to a security interest in favor of United Bank, Inc. ("United Bank"). J.A. 489.

L.A. Pipeline initiated this action on July 28, 2011 against Caiman to collect its account receivable by enforcing its mechanic's lien. J.A.1. Defendants, Bank of America, N.A. and Mark P. Clark, Trustee, were joined because they had a deed of trust on Caiman's assets. J.A.6. Defendants, Glass Bagging Enterprises, Inc. ("Glass Bagging") and Pipeline Supply & Services, LLC ("Pipeline Supply") were joined because they had also filed, or attempted to file, mechanic's liens on the same assets. J.A. 6. Pipeline Supply filed a cross-claim against Caiman to enforce its mechanic's lien. J.A.245. Although Glass Bagging filed a counterclaim against L.A. Pipeline for nonpayment of materials based on contract, quasi-contract (unjust enrichment) and on certain checks returned for insufficient funds (J.A.72), it did not file a cross-claim against Caiman and did not assert any claim in the Case Nos. 11-C-124 or 11-C-70 to enforce its mechanic's lien.

After exchanging some initial discovery, L.A. Pipeline and Pipeline Supply entered into a settlement agreement with Caiman. Pursuant to that agreement, on March 5, 2012 the trial court entered an order dismissing all claims, except Glass Bagging's counterclaim against L.A. Pipeline. J.A.312. L.A. Pipeline's mechanic's lien and the mechanic's lien of Pipeline Supply were released.

On March 5, 2012, the trial court issued an order granting L.A. Pipeline's and Caiman's Motion to Establish An Escrow Fund. J.A.315. Pursuant to W. Va. Code 38-2-36, the trial court released Glass Bagging's purported mechanic's lien, accepted payment from "Caiman & Pipeline" by way of a check from United Bank to the Circuit Court Clerk, and established an escrow fund in the amount of \$165,477.90.¹ J.A.315. This escrow fund was established to protect the alleged interest of Glass Bagging, if any, arising out of its purported mechanic's lien. Specifically, the trial court ordered that

the purported Mechanics' Lien of Glass Bagging Enterprises, Inc. shall constitute a lien on the escrow fund as established in this Court Order in lieu of its Mechanics' Lien on the property of Defendants Caiman Energy, LLC, and Caiman Eastern Midstream, LLC.

J.A.316. The trial court further ordered that:

nothing in this Order shall constitute a declaration of the rights to such escrow fund as between L.A. Pipeline Construction Company, Inc., its

¹The Order was subsequently amended on September 17, 2012. J.A. 437.

secured lien creditor, United National Bank, and Glass Bagging Enterprises, Inc. The Court specifically reserves jurisdiction to determine the validity of the Glass Bagging Enterprises, Inc. Mechanics' Lien and claims against L.A. Pipeline Construction Company, Inc.

J.A. 317.

L.A. Pipeline is no longer in business and is insolvent. There are currently millions of dollars in judgments that have been entered against L.A. Pipeline that remain unsatisfied, including *Equal Employment Opportunity Commission v. L.A. Pipeline Construction Company*, Case No. 2:08-cv-00840 (S.D. Ohio May 10, 2012) for \$250,000.00, plus interest and costs, *International Union of Operating Engineers, Local 181, et al. v. L.A. Pipeline Construction Company, Inc.*, Case No. 4:10-cv-39 (W.D. Ky. Mar. 18, 2013) for \$8,022.04, plus interest, costs, and attorney's fees, *Central States, Southeast and Southwest Areas Pension Fund, et al. v. L.A. Pipeline Construction Company, Inc.*, Case No. 1:11-cv-4204 (N.D. Ill. Oct. 6, 2011) for \$26,070.28, plus interest, liquidated damages, attorney's fees, and costs, *Pipeline Industry Benefit Fund, et al., v. L.A. Pipeline Construction Company, Inc., et al.*, Case No. 4:11-cv-434 (N.D. Okla. Nov. 1, 2011) for \$82,792.72, plus interest, costs, and attorney's fees, *Raymond Orrand, Administrator, et al., v. L.A. Pipeline Construction Company, Inc.*, Case No. 2:11-cv-1103 (S.D. Ohio Mar. 6, 2012) for \$4,718.00 plus interest and costs, *Laborers Local Union 158, et al., v. L.A. Pipeline Construction Co., Inc., et al.*, Case No. 1:12-cv-213 (M.D. Pa. Sept.

24, 2013) for \$129,658.90, plus interest and costs, *Mears Group, Inc., v. L.A. Pipeline Construction Company, Inc.*, Case No. CL 2011-5827 (Fairfax Cir. Ct. Va. Apr. 21, 2011) for \$2,350,000.00, plus interest and costs, and *B.E.T., Ltd. v. L.A. Pipeline Construction Company, Inc.*, Case No. 11 OT 222 (Wash. Comm. Pl. Ct. Ohio Oct. 17, 2011) for \$13,104.79, plus interest and costs. L.A. Pipeline is estimated to owe approximately \$7,000.00 to the State of North Carolina, \$2,500.00 to the State of Pennsylvania, \$60,000.00 to the State of Ohio, \$75,000.00 to the State of Kentucky, \$18,000.00 to the State of Virginia, and \$375,000.00 to the State of West Virginia. There may be other judgments or claims not listed here.

SUMMARY OF ARGUMENT

In order to perfect a lien, a materialman must provide notice and record the lien. This notice requires that the lien holder include a list of the buildings or other structures or improvements to be charged. The legal description of the real estate must be adequate and ascertainable in order to comply with the statute. W.Va. Code § 38-2-11; *Duncan Box and Lumber Co. v. Ruth Crickard Stewart*, 126 W.Va. 871, 872, 30 S.E.2d 391 (1944). The intention is that a mere inspection of the records should disclose all the information necessary to enable those interested in the property to determine the existence of the liens on the property. *Niswander and Co. v.*

Black, 50 W.Va. 188, 196, 40 S.E. 431 (1901).

The notice of a lien filed for recording must describe the buildings, structures, and improvements with sufficient definiteness that the same may be readily identified. *Scott Lumber Co. v. Wheeling Cemetery Association*, 117 W.Va. 534, 536, 186 S.E. 117 (1936). The failure of a company claiming the lien to substantially comply with all of the statute's requirements for the perfection and preservation of the lien within the time period provided for by statute shall operate as a complete discharge of such owner and of such property from all liens for claims and charges of a materialman.

W.Va. Code § 38-2-14.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is necessary pursuant to West Virginia Rule of Appellate Procedure 18(a). Specifically, not all of the parties have waived oral argument, the appeal is not frivolous, the dispositive issue or issues have not been authoritatively decided, and the decisional process would be significantly aided by oral argument. Petitioner believes that this case should be set for Rule 19 argument, as this case involves a narrow issue of law.

ARGUMENT

- A. Glass Bagging's notice does not contain an adequate and ascertainable description.**

A materialman that furnishes any materials, machinery, or other equipment or supplies necessary to the completion of any building or other structure shall have a lien for his compensation. W.Va. Code § 38-2-4. The lien created under the above paragraph shall be discharged after 100 days from the date of the furnishing of the last materials unless the claimant perfects and preserves the lien in accordance with W.Va. Code § 38-2-7.

In order to perfect the lien, the materialman must provide notice and record the lien. This notice requires that the lien holder include a list of the buildings or other structures or improvements to be charged. The legal description of real estate must be adequate and ascertainable in order to comply with the statute. W.Va. Code § 38-2-11. The failure of a company claiming the lien to substantially comply with all of the requirements of the statute for the perfection and preservation of the lien within the time period provided for by statute shall operate as a complete discharge of such owner and of such property from all liens for claims and charges of a materialman. W.Va. Code § 38-2-14.

An adequate and ascertainable description of the land upon which the lien is claimed is essential in order to comply with W.Va. Code § 38-2-11. *Duncan Box and Lumber Co. v. Ruth Crickard*

Stewart, 126 W.Va. 871, 872, 30 S.E.2d 1944 (1944). A description of the property upon which the improvement has been erected is an indispensable statutory requirement. Failure to follow this requirement will lead to the lien being discharged. *Id.* at 872.

In *Duncan Box*, this Court refused to interpret the legal description of a mechanic's lien to cover a neighboring piece of property that was not specifically identified in the contractor's original mechanic's lien. The plaintiff in *Duncan Box* perfected a mechanic's lien describing a parcel of property neighboring the parcel in which the work and the improvements were actually made. No work was performed on the parcel that was specifically identified in the mechanic's lien, but the two parcels shared a common owner. This Court found that there was an adequate and ascertainable description of the land; however, the description was for the wrong land. As there had been no work and no improvements to the parcel identified in the mechanic's lien, no lien could attach to the property stated in the lien. Additionally, this Court refused to adopt and interpret the document to include the neighboring parcel where the improvements were actually performed within the scope of the mechanic's lien. *Duncan Box*, at 873.

Glass Bagging delivered sand sacks in connection

with L.A. Pipeline's construction of a pipeline. J.A.72-73.

These sand sacks were incorporated into the pipeline project. Glass Bagging filed a mechanic's lien offering the following as a legal description:

1501 Wheeling Avenue, Glendale, Marshall County, West Virginia including pipeline installed by L.A. Pipeline Construction Co. for Caiman Energy LLC from December 17, 2010 to April 20, 2011 in Marshall County, West Virginia.

J.A. 331. The only specific description within the above-stated legal description is of a building located at 1501 Wheeling Avenue, in Glendale, West Virginia.

A mechanic's lien does not attach to all of the owner's property located in the county where the lien is recorded. Rather, the lien is limited to the property that the claimant has improved. There is no lien for material furnished to a contractor which has not been used and incorporated into the building or the structure against which a lien is sought. *Atlantic Terra Cotta Co. v. Moore Constr. Co.*, 73 W.Va. 449, 454, 80 S.E. 924 (1914).

Glass Bagging's claim of a lien on 1501 Wheeling Avenue must fail, as this was not the location where the materials were used in construction. J.A. 348. Moreover, this property was not the job site or even a delivery site. Rather, the work was performed on other parcels of property throughout Marshall County, West Virginia, in conjunction

with the construction of a pipeline. Thus, Glass Bagging has no lien on the property located at 1501 Wheeling Avenue.

Glass Bagging's mechanic's lien does make a reference to a pipeline installed by L.A. Pipeline in Marshall County, West Virginia. However, this description is not adequate and ascertainable as required by West Virginia Code § 38-2-11. The notice of lien filed for recording must describe the buildings, structures, and improvements with sufficient definiteness that the same may be readily identified. *Scott Lumber Co. v. Wheeling Cemetery Association*, 117 W.Va. 534, 536, 186 S.E. 117 (1936). The purpose of filing a Mechanic's Lien is to serve notice upon the owner and others of the lien. The intention is that a mere inspection of the record should disclose all the information necessary in order to enable those interested in the property to determine the existence of the liens on the property. *Niswander and Co. v. Black*, 50 W.Va. 188, 196, 40 S.E. 431 (1901).

Here, the vague and general reference to a "pipeline installed by L.A. Pipeline Construction Co. for Caiman Energy LLC from December 17, 2010 to April 20, 2011 in Marshall County, West Virginia" is insufficient to provide notice to any party regarding the location of the property subject to the lien or the existence of the lien at all. There are no means to reasonably identify the location

of the pipeline mentioned in Glass Bagging's lien or the premises upon which the pipeline is located.

Marshall County consists of 307 square miles. The pipelines that L.A. Pipeline was constructing consist of a very, very small portion of those 307 miles. L.A. Pipeline worked on only certain portions of the pipelines. A third party examining the records would have no way of readily identifying the location of the pipeline. Moreover, the pipeline is buried underground. Once construction is complete, any and all evidence of the use of the materials provided by Glass Bagging in its construction are no longer visible from the surface. It is, therefore, especially important in this situation for the notice of lien to have a proper description of the property.

Glass Bagging could have and should have offered a metes and bounds description of the pipeline location, the property that the pipeline would be running through, or even the line under construction between two locations. Compare Glass Bagging's mechanic's lien to the descriptions set forth in the notices of mechanic's lien filed by L.A. Pipeline and Pipeline Supply. J.A. 65, J.A. 249.

As a result of the insufficient legal description, Glass Bagging failed to comply with the requirements of W.Va. Code § 38-2-11. Under W. Va. Code § 38-2-14, the purported

lien is therefore discharged. Without a valid lien, Glass Bagging has no right to the funds in the escrow account.

B. Glass Bagging has not timely asserted a claim to enforce its lien.

Even if Glass Bagging's lien had an adequate and ascertainable legal description of the property, it did not take timely action to enforce its lien. West Virginia Code 38-2-34(a) states that:

Unless an action to enforce any lien authorized by this article is commenced in a circuit court within six months after the person desiring to avail himself or herself of the court has filed his or her notice in the clerk's office, as provided in this article, the lien shall be discharged; but an action commenced by any person having a lien shall, for the purposes of preserving the same, inure to the benefit of all other persons having a lien under this article on the same property, and persons may intervene in the action for the purpose of enforcing their liens.

The first action that Glass Bagging filed, case no. 11-C-70, did not attempt to enforce its purported mechanic's lien. J.A. 519. That action was simply for breach of contract against L.A. Pipeline and for unjust enrichment. There is no mention in case no. 11-C-70 of Glass Bagging's lien.

In case no. 11-C-124, Glass Bagging was joined as a result of L.A. Pipeline's attempt to enforce its own lien. The joinder of Glass Bagging "inur[ed] to the benefit" of Glass Bagging under W. Va. Code 38-2-34, but only to the extent that Glass Bagging took some action "for the purpose of enforcing [its] lien." The enforcement of a lien is not

automatic; a purported lien holder may, but need not, take action to enforce its lien. For example, in case no. 11-C-70, Glass Bagging could have asked to enforce its mechanic's lien but it chose not to do so. In responding to L.A. Pipeline's complaint in case no. 11-C-124, Glass Bagging again chose not to assert a cross-claim against Caiman or any other party to enforce its purported mechanic's lien. The counterclaim that Glass Bagging filed against L.A. Pipeline makes no reference whatsoever to its purported lien. J.A.72. This approach is in stark contrast to Pipeline Supply who, in response to the same complaint, immediately filed a cross-claim against Caiman to enforce its lien. J.A.241.

Based on the trial court's March 5, 2012 Entry, all claims, except Glass Bagging's counterclaim, were dismissed by agreement. J.A.312. Since there were no other claims asserted against Caiman, it was dismissed. L.A. Pipeline's mechanic's lien and the mechanic's lien of Pipeline Supply were released. Glass Bagging never attempted to enforce its mechanic's lien in case no. 11-C-124, nor has it ever requested leave to amend its pleadings to assert such a claim. The filing of case no. 11-C-124 by L.A. Pipeline therefore did not "inure to the benefit" of Glass Bagging for purposes of enforcing its lien under W. Va.

Code 38-2-4.

Perhaps realizing its mistake, Glass Bagging later attempted to file a separate action to enforce its lien, which was given case no. 12-C-47. J.A.563. This separate action, however, was not filed until more than six months after its notice of lien was filed in the clerk's office. It therefore did not satisfy W. Va. Code 38-2-34.

The time limit set forth under the statute is clear. If a claimant does not take action to enforce its lien within six months from filing "the lien shall be discharged." Since Glass Bagging chose not to enforce its lien within the stated limitation period, its lien is now discharged and it does not have the right to receive any portion of the funds held by the trial court in escrow.

C. L.A. Pipeline has standing to challenge the validity of Glass Bagging's purported lien.

In its Order granting Glass Bagging's Motion for Summary Judgment, the trial court held, sua sponte, that L.A. Pipeline did not have standing to challenge the validity of Glass Bagging's mechanic's lien. J.A.501. Based on Illinois, Michigan, and New York case law, the trial court held that only the party entitled to notice under the statute has standing to challenge the validity of the lien. Under W. Va. Code 38-2-11, a materialman must serve the notice of

his lien on "the owner or his authorized agent." Since L.A. Pipeline is not the owner of the pipeline, the trial court concluded that it did not have standing to challenge the validity of Glass Bagging's mechanic's lien. J.A. 503.

The trial court did not discuss how the mechanic's lien statute in West Virginia compares to the mechanic's lien statutes in Illinois, Michigan or New York. The West Virginia statute, specifically W. Va. Code 32-8-18, states that, for the purpose of determining priorities, "furnishers of material" (i.e., Glass Bagging) shall have first liens, and that the lien of such persons, when perfected and preserved, "shall take precedence over any lien taken or to be taken by the contractor..." (i.e., L.A. Pipeline). So, if Glass Bagging's lien was valid, its superior priority would have an adverse effect on the value of L.A. Pipeline's lien.

Moreover, under W.Va. Code 38-2-36, the statute expressly contemplates that a petition to enforce a mechanic's lien may require "complex or extended litigation...in resolving the issue of the validity of liens or claims in the case." So, the plain language of the statute suggests that the validity of all liens on the property must be determined.

Moreover, the trial court's findings are plain error. The trial court appears to have mistakenly believed

that "L.A. Pipeline Construction Co., Inc. was a subcontractor to Caiman Energy, LLC." J.A.503. This is factually incorrect. Caiman Energy, LLC was the owner of the pipeline, not the general contractor, and L.A. Pipeline was the general contractor, not a subcontractor. The trial court expressly recognized that the principal contractor is a necessary party in a suit to enforce a mechanic's lien. J.A.502. So, according to the trial court's own reasoning, and even if Illinois, Michigan, and New York law applied, L.A. Pipeline has standing, as the general contractor (and as a necessary party to this action) to challenge the validity of the Glass Bagging lien.

Moreover, L.A. Pipeline satisfies all the elements of standing, as expressed by this Court in *Harper v. Smith*, 232 W. Va. 655, 659, 753 S.E.2d 612 (2012)(quoting *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, syl. pt. 5, 576 S.E.2d 807 (2002)). First, and most importantly, L.A. Pipeline has suffered an injury in fact. As a result of the priority of Glass Bagging's purported lien, approximately \$165,000.00 is currently being held by the trial court clerk that would otherwise have been paid to L.A. Pipeline, subject to the lien on said funds in favor of its secured lien creditor, United Bank. This injury is directly caused by the existence of Glass Bagging's purported lien, which satisfies the second element of

standing. Finally, the injury will be redressed through a favorable decision of the court. Specifically, if the court were to hold that Glass Bagging does not have a valid lien, then the funds currently held in escrow will be released to L.A. Pipeline, subject to the lien on said funds in favor of its secured lien creditor, United Bank. Thus, L.A. Pipeline satisfies all the elements of standing as expressed by this Court in *Harper*.

D. The trial court cannot reform Glass Bagging's lien in equity or impose a lien on the property based solely on equitable considerations.

In its Order granting Glass Bagging's motion for summary judgment, the trial court held that Glass Bagging's lien included an adequate and ascertainable description sufficient to perfect the same. J.A. 503. Specifically, without citations to any legal authority, the trial court held that:

where the Defendant has a clear right to the payment owed it by the Plaintiff, a lien is an equitable remedy in which procedural defects are not fatal to the claim. In addition, the Plaintiff's argument to grant summary judgment based on such imperfections is belated; the lien against the Plaintiff was converted to a bond, paid into the court, by a previous order in this matter. Therefore, to uphold the principles of equitable resolution and preventing unjust enrichment, the Court concludes that the now-discharged lien by the Defendant against the Plaintiff was and should henceforth be considered to be valid.

J.A. 504-505. So, the trial court's reasoning has little to do with the sufficiency of the description itself, which it referred to as a "procedural defect"; instead, the trial

court's primary focus is on the perceived equities, including Glass Bagging's "clear right to payment."

The issue in this case is not, and never has been, whether Glass Bagging is entitled to payment from L.A. Pipeline. L.A. Pipeline does not dispute that Glass Bagging is entitled to judgment against it for the full amount of its claim. In fact, when Glass Bagging filed a motion for summary judgment on its claims against L.A. Pipeline, and the trial court asked the parties to submit proposed findings of fact and conclusions of law, L.A. Pipeline submitted a proposed consent judgment entry. J.A. 492.

Glass Bagging has a "clear right to payment" from L.A. Pipeline, but so do its many other unsecured creditors, including the Equal Employment Opportunity Commission, the International Union of Operating Engineers, Local 181, *et al.*, Central States, Southeast and Southwest Areas Pension Fund, *et al.*, Pipeline Industry Benefit Fund, *et al.*, Raymond Orrand, Administrator, *et al.*, Laborers Local Union 158, *et al.*, Mears Group, Inc., B.E.T., Ltd., the State of North Carolina, the State of Pennsylvania, the State of Ohio, the State of Virginia, and the State of West Virginia. One of L.A. Pipeline's unsecured creditors, Pipeline Industry Benefit Fund, *et al.*, even attempted to intervene in this action (J.A. 412), but later withdrew its motion when it realized that

Glass Bagging's only claim to the escrow fund was based on its purported mechanic's lien and that, in the event that the fund is released, it would be subject to the claim of L.A. Pipeline's secured creditor, United Bank. J.A.449.

The only question presented by this case is whether one of L.A. Pipeline's creditors, Glass Bagging, should be treated differently than all the rest of its creditors. If Glass Bagging has timely asserted a mechanics' lien with an adequate and ascertainable legal description, then it is a secured creditor (just like Pipeline Supply) and there is good reason for it to receive payment when so many of L.A. Pipeline's other creditors will not. If, on the other hand, Glass Bagging does not have a valid mechanic's lien, then it is a an unsecured nonpriority creditor, with no better legal or equitable right to receive payment than anyone else. In fact, under the Bankruptcy Code, Glass Bagging's right to receive payment is even worse than L.A. Pipeline's other unsecured priority creditors, including the State of West Virginia. See 11 U.S.C. 507(a)(8)(C). Absent a valid mechanic's lien, there is simply no basis, in equity, to prefer one of L.A. Pipeline's unsecured nonpriority creditors over all the rest.

Moreover, the trial court does not have the legal authority to create an equitable lien in favor of Glass

Bagging. West Virginia Code 38-2-14 states that:

the failure of any such claimant of any such lien to comply substantially with all of the requirements of this article for the perfection and preservation of such lien, within the time provided therefor in this article, shall, except as provided in section twenty of this article, operate as a complete discharge of such owner and of such property from all liens for claims and charges of any such...materialman...for any materials, machinery or other necessary equipment claimed to have been furnished in connection with such work (emphasis added).

The use of the words "all liens" is significant. This means that if a materialman (Glass Bagging) fails to comply with the requirements of the statute, including the requirement of an adequate and ascertainable legal description, all liens, including any lien that might otherwise have arisen in equity, must be discharged.

Courts have already refused to impose an equitable lien in circumstances similar to this case. In *Tygart Valley Brewing Co. v. Vilter Mfg. Co.*, 184 F. 845 (4th Cir. 1910), a purported mechanic's lien had not been properly authenticated. This was essential to the validity of the lien. *Id.* at 848. The claimant was therefore unable to enforce the lien. The court was asked to amend the lien or to impose a lien based on equitable considerations. It held:

The suggestion that this court can be influenced by equitable considerations, based upon, perhaps, a meritorious claim, is untenable. The object of the bill is to enforce a lien, and the court has at once presented to it for determination by the demurrer whether one exists; if not, this court sitting in equity has no jurisdiction of the subject-matter -- it matters not how meritorious the complainant's demand may be, from the standpoint of the defendant's indebtedness.

Tygart, 184 F. at 850. Thus, the Fourth Circuit, applying West Virginia law, expressly rejected the position taken by the trial court in this case. There is simply no legal basis for reforming Glass Bagging's purported mechanic's lien or for imposing an equitable lien based on equitable considerations.

CONCLUSION

For all the foregoing reasons, this Court should vacate the Circuit Court's August 26, 2015 Order granting Respondent, Glass Bagging Enterprises, Inc.'s Motion For Summary Judgment and should further enter judgment as a matter of law in favor of Petitioner, L.A. Pipeline Construction Co., Inc., by ordering and declaring that the mechanic's lien filed by Glass Bagging Enterprises, Inc. with the Marshall County Clerk's Office at Book 8, Page 26 does not comply with W.Va. Code § 38-2-11 because it lacks an adequate and ascertainable description of the real estate, that Glass Bagging Enterprises, Inc. therefore does not have a valid lien on the escrow fund established by the trial court's September 17, 2012 Amended Order, that the escrow fund should be immediately disbursed to L.A. Pipeline Construction Co., Inc., subject to the lien of Petitioner's secured lien creditor, United National Bank, and that costs of this appeal be assessed against Respondent.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies a copy of the foregoing **Petitioner's Brief** was served upon the following parties by sending a copy of same by ordinary U.S. mail, postage pre-paid, on this 23rd day of December, 2015:

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